

Virginia Clean Water Revolving Loan Fund Land Conservation Loan Program Guidelines

VCWRLF Land Conservation Loan Program - Enabling Legislation

During the 2003 session, the Virginia General Assembly amended Chapter 22 of the Code of Virginia by adding §62.1-229.3. The new code section further expanded the activities of the Virginia Water Facilities Revolving Fund (the Fund) by allowing the State Water Control Board to authorize low interest loans from the Fund for acquisition of title or other rights to real property, when the Board was satisfied that the acquisition would protect or improve water quality and prevent pollution of state waters. According to the enabling legislation, VCWRLF financing for land acquisition can only be available in fiscal years when there is a balance remaining after the Fund has satisfied all eligible loan requests from local governments.

The following is the text of the amendment to the Code of Virginia which enables the State Water Control Board to authorize land acquisition loans when a surplus is available in the Virginia Water Facilities Revolving Fund.

§ 62.1-229.3. Loans for Land Conservation

Loans may be made from the Fund, in the Board's discretion, to a local government or a holder as defined in §10.1-1009 for acquiring fee simple title or a permanent conservation or open space easement in real property upon the local government or holder establishing to the satisfaction of the Board that the acquisition will (i) protect or improve water quality and prevent the pollution of state waters, and (ii) protect the natural or open-space values of the property or assure its availability for agricultural, forestall, recreational, or open-space use. The Board shall consult with the Department of Conservation and Recreation in making a determination on whether the acquisition will meet the above requirements. Loans for land acquisition may be made only in fiscal years in which all loan requests from local governments for eligible projects as defined in §62.1-224 have first been satisfied. The Board shall develop guidelines for the administration of such loans.

The Department of Environmental Quality, Clean Water Financing and Assistance Program, on behalf of the State Water Control Board, has developed these guidelines and will administer the VCWRLF Land Conservation Loan Program.

Background and Purpose

Since 1987, the Virginia Clean Water Revolving Loan Fund (Fund) has been providing low interest loan funding for water quality improvement projects throughout the Commonwealth. Funds are currently provided to local governments, public service authorities, agricultural producers, partnerships, and corporations for a variety of project types. Loan repayments are circulated back into the Fund to create a dedicated source of revenue available for future clean water projects.

The State Water Control Board (Board) has the authority to administer the policy aspects of the Fund, determining who receives funds, at what interest rates, and under what terms. The Board has delegated responsibility for management of the day-to-day operations of the Fund to its staff in the Department of Environmental Quality (DEQ). The Virginia Resources Authority (VRA) serves as the financial manager of the Fund.

The purpose of the Virginia Land Conservation Loan Program is to provide a long term source of low interest financing for the conservation of land in Virginia in order to improve and/or protect the

water resources of the Commonwealth. Additional benefits of the program include the protection of open space or natural values of the properties and/or the assurance of the availability of the land for agricultural, forestal, recreation, or open space use. Although these other benefits are of value, the principle focus and utilization of the Fund is on beneficial impact to water quality.

Funding Availability

No special appropriation has been budgeted to begin this funding initiative. Therefore, DEQ will be making funding available from existing revenue through the Virginia Clean Water Revolving Loan Fund Program (VCWRLF). Land conservation loans will be authorized only in those fiscal years when all local government requests for eligible wastewater facility improvement loans have been satisfied. Currently, the total availability of funds for all VCWRLF uses is approximately \$80 to \$100 million per year. Further, these funds can be leveraged to more than double this availability if the demand exists. Funds for the Land Conservation Loan Program must come from the VCWRLF repayment stream, which is currently in the \$40 million per year range.

Application Submittal Timeframe

Applications for VCWRLF Land Conservation Loans will be accepted once each year, concurrent with the program's wastewater facility improvement loan applications, which normally occurs in July. (See attached Land Conservation Loan Project Application).

The completed application form and all necessary support documentation should be mailed to:

Ms. Karen M. Doran
Clean Water Financing & Assistance Program
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Eligible Applicants

The following governmental bodies and holders may apply for VCWRLF Land Conservation Loans.

- Virginia state government agencies and departments
- Virginia county, city and town governments
- Virginia municipal public service authorities
- Registered (tax exempt) nonprofit organizations that fulfill the "holder" requirements in

§10.1-1009 of the Conservation Easement Act

When funds are available, the VRLF can provide land acquisition loans to local governments and other qualified holders. The Code of Virginia, Section §10.1-1009 defines "holder" as: *"a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C.A. § 501 (c) (3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property"*

The applicant must demonstrate that they will have the necessary funding and staffing to manage the project in a manner that will achieve the purposes described in the application. For nonprofit organizations, the applicant should provide documentation to substantiate that they have maintained an office in Virginia for at least five (5) years or be a national organization which has been in existence for at least five (5) years and that has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission.

Loan Interest Rate and Terms

Short term loans, up to ten (10) years, will be amortized and interest rate will be fixed at 300 basis points below the prevailing prime rate as reported by "*Bloomberg*".

Long term loans, from ten (10) to twenty (20) years, are available on a case by case basis as determined by the total project need, the applicant's ability to establish or create an adequate loan repayment source and loan security needs. Loans amortized for a period greater than ten (10) years will be fixed at a 3% interest rate.

The interest rate and length of the loan will be set at the time the loan is approved or authorized by the SWCB. The length of the loan will be based on the recipient's request, provided that the request is supported by the Virginia Resources Authority (VRA) financial capability analysis. To determine the repayment time period, VRA will evaluate the applicant's credit history, repayment capability, cash flow forecast, proposed security arrangements and the revenue stream that is projected to be available for repayment of the Land Conservation Loan.

The authorized interest rate and the loan terms will remain in effect for a 12 month period following loan approval by the SWCB. The interest rates for the short term authorized loans will be adjusted at closing, should the prevailing prime rate at the time of the Board's approval decline. At the sole discretion of the SWCB, the authorization period can be extended after receipt of a written request from the loan recipient. However, the interest rate would be subject to recalculation based on banking and market conditions that exist at the time.

Allowable Loan Amount

The minimum Land Conservation Loan is \$50,000 and there is no maximum loan amount established. Loans may be made for 100% of the eligible costs of the project.

Loan Eligible Expenses

Generally, loans for acquisition projects will only be awarded for current projects. Loans for projects that have already been completed will be awarded only in exceptional situations involving considerable public benefit and a compelling demonstration of unusual financial need and circumstances.

The proposed project must be for a specific site or sites. The site(s) to be acquired must be within the territorial boundaries of the Commonwealth of Virginia and the current landowner(s) must be receptive to negotiation relating to acquisition of the proposed site.

The following are categories of land acquisition costs which are eligible for financing by the VCWRLF Land Conservation Loan Program.

- Surveying
- Title and Insurance
- Legal
- Appraisal
- Environment studies of the site(s)
- Purchase price of land, permanent easement, or development rights which meet the following criteria:

Criteria for Purchase of Development Rights (PDR)

Funding for PDR loan applications shall be for costs associated with the acquisition of real property interest only. Administrative costs such as salaries, rent, equipment and travel will not be accepted. Applications for funding for acquisitions of easements under PDR programs will be evaluated according to the following criteria.

1. Evidence that the local governing body has adopted a PDR ordinance or other legal authorization establishing a PDR program that contains appropriate provisions for permanent protection of resources.

a) The ordinance or other authority cites, and the easements are taken under the authority or the Open Space Land Act

b) The ordinance or other authority provides for permanent protection of resources through easements that are perpetual in nature and not extinguishable at the option of the property owner or the local government, except pursuant to the provisions of the Open Space Act.

c) Easements purchased under the ordinance or other authority must be recorded in the local clerk of circuit court records and include provisions that adequately and appropriately protect the resources, including but not necessarily limited to provisions limiting subdivision and development of the property, provisions for regular inspections of the property for compliance with easement terms, and provisions requiring that the easement be referenced in any deed conveying the property.

2. The proposed project(s) is/are well identified and represent good candidates for protection through the PDR program.

a) The application includes documentation that the owner of the parcel(s) in question is/are receptive to negotiations for purchase of development rights.

b) The resources will be fully and appropriately protected as a result of the purchase of the development rights.

c) Strong applications will document multiple public benefits to be derived from the proposed project(s). These benefits may be protection of more than one category of resource, or other benefits such as orderly community development, education, research, recreation, or community access to the resource.

3. The applicant demonstrates the administrative capacity to obtain and hold the easements and to successfully monitor and enforce terms of the easements in the future

4. The applicant demonstrates other evidence of commitment to protection of local natural open space including recreational and forestal resources and historic resources. Such evidence shall include, at a minimum, recognition of such resources in the comprehensive plan. Such evidence may further include agricultural and forestal districts, use value assessment and taxation, historic district zoning, mountain protection zoning, or other resource protection programs.

5. The proposed project(s) represent efficient use of loan funds. This will be best demonstrated by evidence that the loan funds will be leveraged in some way. Possibilities include:

- a) The property owner is willing to make a partial donation of the easement
- b) The applicant is offering matching funds greater than the required minimum
- c) The easement will serve as a catalyst for other resource protection activities
- d) The easement is a critical part of a larger project
- e) The cost of the easement represents a small proportion of the entire value of the property

6. There is demonstrated public support for the PDR program and/or the proposed project.

Ineligible Loan Costs

The following expenses cannot be included when determining the allowable amount of a VCWRLF Land Conservation Loan.

- "IN KIND SERVICES"
- Costs for which any federal, state, local or other grant funds will be provided, unless those funds will all be paid back to the Land Conservation Loan Fund immediately upon receipt.
- Administrative costs such as salaries, rent, equipment, and/or travel
- Costs to operate or maintain the property

Loan Funding Priority Ranking

In years when funds are available for Land Conservation loans, DEQ will prioritize applications for loan assistance on a statewide basis. Applications for land acquisitions, which are expected to provide the greatest water quality benefit, will be given the highest funding priority. The funding priority of applications for land acquisitions is determined by demonstration of recognizable reduction in NPS pollution of Virginia waters.

Land Conservation Loan Funding Prioritization				Total Of 600 Points Possible	
I. Water Quality Concerns				(Maximum 450 Points)	
Level of Impact	Impaired	Threatened or Nutrient Enriched	Public Water Supply	DCR High Priority	Other
Major	450	400	350	300	250

Moderate	400	350	300	250	200
Minor	350	300	250	200	150
None	0	0	0	0	0
II. Additional Environmental Benefits				(Maximum 100 Points)	
Public Access				20	
Natural / Open Space Value				20	
Agriculture				20	
Forestry				20	
Recreation				20	
III. Readiness to Proceed				(Maximum 50 Points)	
All Contract(s) Negotiated / Close Within 9 Months				50	
Appraisals Completed / Negotiating Contract(s)				40	
Landowner Interest Documented / Appraisal Underway				30	
Site(s) Specified / Landowner Interest Documented				20	
Site(s) Specified				10	